

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
CRIMINAL ACTION NO. 01-10321-RWZ

UNITED STATES OF AMERICA

v.

JOHN MIKUTOWICZ

ORDER

July 7, 2004

ZOBEL, D.J.

Following reversal by the Court of Appeals of a sentence lower than that dictated by the Guidelines, this Court re-sentenced defendant on May 20, 2004 to a considerably longer period of incarceration. Defendant filed a notice of appeal from that sentence and judgment on June 25, 2004. He has now moved for re-sentencing in light of the decision of the Supreme Court in Blakely v. Washington, No. 02-1632, 2004 U.S. LEXIS 4573 (June 24, 2004), and for a stay of execution of sentence.

Since the sentence is based in part on facts determined by the Court, it may well be illegal. However, since the notice of appeal has effectively deprived this Court of jurisdiction, United States v. Distasio, 820 F.2d 20, 23 (1st Cir. 1987) (“[A] docketed notice of appeal suspends the sentencing court’s power to modify a defendant’s sentence.”), the motion for re-sentencing and for a stay is denied.

---

DATE

/s/ Rya W. Zobel

---

RYA W. ZOBEL

UNITED STATES DISTRICT JUDGE